



STATE OF WASHINGTON

DEPARTMENT OF CORRECTIONS

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October 25, 1995

Mr. Gary Reid
Chief Assistant Code Reviser
Office of the Code Reviser
Legislative Building
PO Box 40551
Olympia, Washington 98504-0551

Dear Mr. Reid:

The following enclosed Department of Corrections WAC rules, 137-56-180, 137-56-210, and 137-56-250 are submitted for publication in the Register and the Washington Administrative Code. Pertinent information is as follows:

- a. Amended rules 137-56-180, 137-56-210, and 137-56-250 were adopted on September 1, 1995.
- b. The effective date of these amended rules is December 1, 1995.
- c. I certify pursuant to RCW 34.05.030(c) that Rules 137-56-180, 137-56-210, and 137-56-250 are exempt from the APA.
- d. The purpose is to bring these rules into compliance with standards of the new court rules pertaining to confidential informant evidence.

Thank you for your assistance. Please contact me if you have questions or concerns.

Sincerely,

Chase Riveland
Secretary

CR:ms
Enclosures

CODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

OCT 30 1995

TIME: 11:17
WSR 95-22-060

WAC 137-56-180 Disciplinary hearing. (1) A work/training release resident served with allegations providing the basis for a proposed disciplinary action shall be notified in writing that a hearing has been set before a disciplinary hearing committee/hearing officer. An allegation involving the commission by the resident of a serious infraction may be amended at anytime by the department, provided that twenty-four hours notice be given to the resident or the resident agrees in writing to waive notice to respond to the allegations. The hearing will be set within five working days of the suspension of the work/training release plan, unless a longer time is approved by the area assistant director or his or her designee. The written notice of hearing shall be given to the resident at least twenty-four hours before the hearing unless notice is waived, in writing, and advise the resident of his or her rights, including the following:

(a) The resident shall be present at all stages of the hearing, except during deliberation in appropriate circumstances.

(b) The resident shall present his or her own case to the disciplinary hearing committee/hearing officer. If there is a language or communications barrier, the disciplinary hearing committee chairperson/hearing officer shall appoint an advisor.

(c) The resident may have an attorney present at his/her expense, only when a felony has been alleged. Such representation is limited to advising the resident of his or her rights to remain silent, and does not include the right to act as an advocate throughout the hearing.

(d) The resident may testify during the hearing or remain silent, and his or her silence will not be held against him or her.

(e) The work/training release resident may, in preparation for the hearing, ask the disciplinary hearing committee chairperson/hearing officer that certain department or contract staff members, other work/training release residents, and other persons be present as witnesses at the hearing. The disciplinary hearing committee/hearing officer shall grant such request if it is determined by the disciplinary hearing committee chairperson/hearing officer that to do so would not be unduly hazardous to the work/training release facility's safety or correctional goals: *Provided, however,* Limitations may be made by the disciplinary committee if the information to be presented by the witnesses is deemed to be irrelevant, duplicative, or unnecessary to the adequate presentation of the work/training release resident's case.

(2) Attendance at the hearing shall be limited to parties directly concerned. The disciplinary hearing committee chairperson/hearing officer may exclude unauthorized persons.

(3) The disciplinary hearing committee/hearing officer shall make an evaluation of the resident((s)) and may make a recommendation to the indeterminate sentence review board regarding good time credits and readiness for parole.

WAC 137-56-210 Disciplinary hearing--Rules of evidence. (1)

All relevant and material evidence is admissible which, in the opinion of the disciplinary hearing committee chairperson, is the best evidence reasonably obtainable having due regard for its necessity, availability, and trustworthiness.

(2) All evidence material to the issues raised in the hearing shall be offered into evidence. All evidence forming the basis for the department's decision in a matter shall be offered into evidence.

(3) The work/training release resident shall be allowed to call witnesses approved by the disciplinary hearing committee chairperson pursuant to WAC 137-56-180 (1)(e) and to present documentary evidence in his/her defense at the hearing when permitting the work/training release resident to do so will not be unduly hazardous to the work/training release facility's safety or correctional goals unless the testimony to be presented by the witness and/or the information desired to be presented is deemed by the disciplinary hearing committee chairperson to be irrelevant, immaterial, unnecessarily duplicative of other information and/or testimony before the disciplinary hearing committee, or otherwise found to be unnecessary to the adequate presentation of the work/training release resident's case. The testimony of all witnesses from outside the work/training release facility shall be considered in writing. In the event the disciplinary hearing committee chairperson determines that the presence of a witness is appropriate, the disciplinary hearing committee should call the witness, or in its discretion, may continue the hearing if the witness is unavailable, but will become available within a reasonable period of time: *Provided, however,* That if the witness is unavailable, the disciplinary hearing committee may, in its discretion, consider the written testimony previously submitted.

(4) The work/training release resident may question witnesses against him/her at the discretion of the disciplinary hearing committee chairperson. ~~((If the disciplinary hearing committee chairperson determines that a work/training release resident witness would be subject to risk or harm if his/her identity were disclosed, testimony of the said witness may be introduced by the testimony of a department or contract staff member to whom the information was provided by and/or the affidavit of the witness. If the department or contract staff member to whom the work/training release resident witness provided information is, for good cause, unavailable, the written statement of the department or contract staff member may be used. The disciplinary hearing committee shall, out of the presence of all work/training release residents, inquire as to the identity of any anonymous work/training release resident, and as to how the testifying department or contract staff member received such information. The refusal of the department or contract staff member presenting the testimony of the unidentified work/training release resident witness to identify the witness shall make the testimony inadmissible unless the refusal to identify the witness is approved by the area assistant director based on his/her determination of good cause for nondisclosure and that the informant is reliable. The disciplinary hearing committee must make an independent determination as to the~~

reliability of informant and the credibility of the information offered, except that the disciplinary hearing committee may accept an assurance of credibility from the assistant director who approves the nondisclosure of the identity of the work/training release resident. The resident should be advised on the record, or subsequently provided with, a statement of good cause as to why the resident was not allowed to call a witness or why the identity of a resident witness was not disclosed.) If the disciplinary hearing chairperson determines that a source of information would be subject to risk or harm if his/her identity were disclosed, testimony of the confidential source may be introduced by the testimony of a staff member. The confidential testimony may be provided by the source or by the written and signed statement of the source. If the staff member to whom the source provided information is unavailable, the written statement of this staff member may be used. The disciplinary hearing chairperson shall, out of the presence of all work/training release residents and off the record, identify the confidential source, and how the testifying staff member received the confidential information. The staff member presenting the information from a confidential source shall identify the source and the circumstances surrounding the receipt of the confidential information to the disciplinary hearing chairperson, off the record. The disciplinary hearing chairperson shall make an independent determination regarding the reliability of the confidential source, the credibility of the confidential information, and the necessity of not revealing the source of the confidential information. In determining whether the confidential source is reliable and the confidential information is credible, the disciplinary hearing chairperson should consider all relevant circumstances including, but not limited to:

- (a) Evidence from other staff members that the confidential source has previously given reliable information;
- (b) Evidence that the confidential source had no apparent motive to fabricate information;
- (c) Evidence that the confidential source received no benefit from providing the information;
- (d) Whether the confidential source is giving first-hand information;
- (e) Whether the confidential information is internally consistent and is consistent with other known facts; and
- (f) The existence of corroborating evidence.

The disciplinary hearing chairperson shall also determine whether safety concerns justify nondisclosure of the source of confidential information. The reliability and credibility determination and the need for confidentiality must be made on the record.

(5) Documentary evidence, including written statements submitted by interested parties on behalf of the resident, may be received. Such evidence may include copies of documents, excerpts from documents and incorporation of written material by reference, including depositions.

(6) The chairperson of the disciplinary hearing committee may exclude relevant evidence if the probative value is outweighed by the danger of unfair prejudice, confusion of the issues, misleading the committee or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(7) The disciplinary hearing committee could determine if the resident is competent to understand the charges and proceedings or needs an interpreter to participate therein. If the resident is not competent or needs an interpreter, the disciplinary hearing committee should postpone the hearing to secure a report on the competency of the resident, provide an interpreter, or take such other action as will assure the fairness and orderliness of the hearings.

AMENDATORY SECTION (Amending WSR 94-07-065, filed 3/14/94, effective 5/1/94)

WAC 137-56-250 Disciplinary hearing--Appeal. The resident may appeal the decision of the facility disciplinary hearing committee to the assistant director, or his or her designee. Appeal requests must be in writing, must be specific and based on objection to the procedures used or the information available to the committee in making its decision. Appeals must be submitted within five working days of the committee's oral decision. For reasons of community protection, all sanctions ordered by the disciplinary hearing chairperson will be imposed following the hearing and will not be stayed. The assistant director, or his or her designee, upon receipt of an appeal, will review the findings and decision of the disciplinary hearing committee and either:

- (1) Affirm, or affirm and modify to a lesser sanction the decision of the facility disciplinary hearing committee; or
- (2) Reverse the decision of the facility disciplinary hearing committee; or
- (3) Remand the decision for additional findings or rehearing.